In the High Court of Uttaranchal, at Nainital.
Writ Petition No. 325 of 2005 (S/B)

Birendra Singh Mehra S/o late R.S. Mehra,
Senior Manager (Under Suspension), Union
Bank of India, R/o Mukul Vihar, Talli Bamori,
Haldwani, District Nainital … Petitioner.

Versus

1- Union Bank of India, through its Chairman cum Managing Director, Central Office, 239, Vidhan Bhawan Marg, Nariman Point, Mumbai.
2- Assistant General Manager (I.R.), Union Bank of India, Central Office, (I.R. Division) 239, Vidhan Bhawan Marg, Nariman Point, Mumbai.
3- Assistant General Manager, Union Bank of India, Regional Office, Radha Palace, Rajpur Road, Dehradun ….. Respondents

Sri Manoj Tiwari, learned counsel for the petitioner.
Smt. Tehmina Punwani, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17-04-2006

By way of this writ petition the relief has been sought by the petitioner for issuing a writ in the nature of mandamus, directing the respondents to keep the disciplinary proceedings initiated against the petitioner, in abeyance till conclusion of criminal proceedings, initiated pursuant to the complaint dated 7.1.2005.

2- Brief facts of the case, as per the writ petition, are that the petitioner was appointed as Probationary Officer in the Union Bank of India in the year 1982. Thereafter he was promoted from time to time and in May, 2004, he was posted as Senior Manager, Rudrapur Branch of the Bank. The petitioner was transferred from Rudrapur Branch to Regional office, Azamgarh on 10-05-2004. Thereafter he was transferred from Azamgarh to Pune on 3-

7-2004. The respondent No.2 issued an order dated 20-7-2004, whereby the petitioner was placed under suspension. It was alleged in the suspension order that certain acts of omission and commission have been observed during the petitioner's tenure at Rudrapur.

3- As per the petitioner, one charge sheet was issued to him on 5.1.2005, wherein the main charge was in respect of the loan account of M/S International Intrade, which deals with import of metal scrap. In the aforesaid charge sheet three charges were also added in respect of M/S Dev Bhumi Parayavaran Sarakshan Sewa Samiti, M/S Anjali Automobiles and M/S New Glory Gallery, which pertain to Haldwani Branch.

4- On 7-1-2005 a complain was lodged by Chief Vigilance Officer, Union Bank of India in the office of Superintendent of Police, C.B.I., Dehradun against Rachit Malhotra, Shyam Mohan Malhotra, Kapil Kohli and the petitioner and pursuant to the said complaint, C.B.I. registered a regular case. The petitioner has alleged that the main charge against him is in respect of loan account of M/S International Intrade and the other charges have been added simply to lend weight to the charge sheet and bare perusal of the charge sheet would reveal that complicated questions of facts and law are involved in the matter and in case if the defence of the petitioner is disclosed during disciplinary proceedings, in that event, he would be precluded from defending himself effectively in the criminal trial. The petitioner has therefore filed the present writ petition before this Court.

5- The counter affidavit has been filed by the respondents pleading therein that the writ petition is premature and not maintainable since the charge sheet by the Central Bureau of Investigation has not yet been issued and as such no criminal trial has commenced. It has also been pleaded that both departmental and criminal proceedings against the petitioner are not in respect of the same set of charges. The respondents have also pleaded in the counter affidavit that the charge pertaining to M/S International Intrade is not the main charge against the petitioner but is one of the charges in pursuance of which the departmental

proceedings have been initiated against the petitioner. It has also been pleaded that the C.B.I. investigation pertains to the account of M/S International Intrade and whereas the charge sheet issued to the petitioner in the departmental proceedings pertains to several accounts of Rudrapur and Haldwani Branches.

5- The petitioner has filed the rejoinder affidavit reiterating the facts mentioned in the writ petition.

6- Heard the learned counsel for the parties and perused the record.

7- Learned counsel for the petitioner has argued that in the instant case disciplinary inquiry and the criminal proceedings are based on identical and similar set of facts and the charge in the criminal cases is of grave nature which involves complicated questions of law and facts, hence it would be desirable to stay the departmental proceedings. Learned counsel for the petitioner in support of his submission has relied on the following cases:-

1- **Kusheswhar Dubey Vs. M/s Bharat Coking Coal Ltd. and others, 1988 (4) S.C.C. 319.**

2- **State Bank of India and others vs. R.B. Sharma, (2004) 7 S.C.C. 27.**

3- **Kendriya Vidyalaya Sangathan and others Vs. T. Srinivas (2004) 7 S.C.C. 442.**

4- **Caption M. Paul Anthony Vs. Bharat Gold Mines and another, (19991) 3 S.C.C. 679.**

5- **Rajendra Nath Vs. Nainital Bank Ltd. and others, 2005 (2) U.D., 152.**

8- We have gone through the cases cited by the learned counsel for the petitioner before us. The Hon’ble Apex Court in all the cases has held that where criminal as well as disciplinary actions are governed with same facts then stay of disciplinary action would be justified.

9- The Division Bench of this Court in the case of **Rajendra Nath Vs. Nainital Bank Ltd. and others, 2005 (2) U.D., 152** cited before us has held that “the disciplinary and the criminal proceedings based on same set of facts and charges in the criminal cases of grave nature, involving complicated questions

of law and facts and even after 17 months of the said stay orders, charge sheet filed only in one criminal case and trial not started in that case also, therefore, in these events of circumstances this Court dismissed the writ petition to enable the bank to resume and proceed with the departmental proceedings despite the pendency of the criminal cases against the petitioner."

10- In the instant case the record reveals that the charge sheet by the Central Bureau of Investigation has not yet been filed and as such the criminal trial has not commenced. It also reveals that the complaint with the Central Bureau of Investigation pertains to fraud perpetrated in only one account in Rudrapur Branch of respondent bank whereas the charges in the departmental proceedings include gross irregularities in six accounts pertaining to both Rudrapur and Haldwani Branches. In view of the aforesaid facts, it is quite clear that the departmental proceedings and the proceedings in the criminal cases in the instant case are not based on the same set of facts and the evidence in both the cases would also not be common.

11- The Hon'ble Supreme Court in a case **State of Rajasthan Vs. B.K. Meena and others,** reported in **(1996) 6 Supreme Court Cases 417** has held "that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act and the Indian Penal Code, if any, are established and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. The Hon'ble Apex Court, therefore, held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent."

12- Further the Hon'ble Supreme Court in a case **South Bengal State Transport Corpn. Vs. Sapan Kumar Mitra and others, (2006) 2 Supreme Court Cases 584** has held as under:-

"9. We have heard the learned counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent employee when the criminal case ended in acquittal, even then the learned counsel for the respondents sought to argue this ground before us. In our view, this ground is no longer res integra. In nelson Motis v. Union of India a three-Judge Bench of this Court observed at SCC p. 714, para 5, as follows:

> *'5. So far as the first point is concerned, namely, whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case.'*

10. Similarly in Senior Supdt. Of Post Offices v. A. Gopalan the view expressed in Nelson Motis v. Union of India was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different form that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the department proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the

position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed."

13- Therefore, in view of the law laid-down by the Hon'ble Supreme Court, it is quite clear that the departmental proceedings and proceedings in a criminal case can, of course, proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. It is also clear that if the departmental proceedings and the criminal cases are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

14- In the instant case it is quite clear that the charges in the departmental proceedings and the criminal proceedings are distinct and separate. Therefore, we do not find any ground to grant the relief to the petitioner by issuing the writ in the nature of mandamus as has been prayed.

15- The writ petition lacks merit and is liable to be dismissed.

16- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB